Supreme Court, U.S.
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No.94-

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1994

Monica Migliorino (Miller),

Petitioner,

v.

Delaware Women's Health Organization,Inc.,
Summit Women's Health Organization, Inc.,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

Petition For Writ Of Certiorari

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QUESTIONS PRESENTED

1. Should the rule of *United States v. Enmons,* which exempted even violent labor protests from the definition of "extortion" under the Hobbs Act, be applied to non-violent protests which arise in a non-union context?

2. Does RICO, given its utilization of Hobbs Act extortion as a predicate act, violate the First Amendment in its application to this Petitioner, where the Respondents allege that presumptively protected activities such as advocacy, group association, and the conducting of burial ceremonies are "extortion"?

3. Was the Court of Appeals required, on remand from this Court, to affirm the trial court dismissal of the Complaint on grounds set forth in the record but not relied on by the trial court and not decided by this Court in the prior appeal, rather than remanding that issue back to the trial court?

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT

In addition to the parties listed in the caption, the following were parties to the proceedings in the Court below: Plaintiff-Appellant, The National Organization for Women ("N.O.W."), and Defendant-Appellees, John Patrick Ryan, the Pro-Life Direct Action League, Inc. ("PDAL"), Vital-Med Laboratories, Inc., Conrad Wojnar, Randall A. Terry, Operation Rescue, Project Life, Joseph M. Scheidler, Timothy Murphy, Andrew Scholberg, and the Pro-Life Action League, Inc.

Petitioner is an individual and has no parent or subsidiary companies.

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No.94

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OCTOBER TERM, 1994

Monica Migliorino (Miller),

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v.

Delaware Women's Health Organization,Inc.,
Summit Women's Health Organization, Inc.,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

Petition For Writ Of Certiorari

OPINIONS BELOW

The Court of Appeals' unpublished Order on Remand from the Supreme Court of the United States of May 16, 1994, remanding the case to the District Court with instructions, is reported at 25 F.3d 1053 (7th Cir. 1994) (Appendix A). The Court of Appeals' Judgement without oral argument remanding this case to the District Court for further proceedings in accordance with the decision of the Court of Appeals, dated May 16, 1994, is attached hereto as Appendix B. The Court of Appeals' Order of September 12, 1994 denying the Petition of Petitioner Monica Migliorino (Miller) and other Co-Defendants for Rehearing is attached hereto as Appendix C. The Order of the

Court of Appeals of September 30, 1994 denying the Motion of Petitioner Migliorino (Miller) and Co-Defendants for Stay of Mandate pending the filing and disposition of a Petition for Certiorari by the United States Supreme Court is attached hereto as Appendix D.

The District Court's original Order of Dismissal of May 29, 1991 is published at 765 F. Supp. 937 (N.D. Ill. 1991). The Court of Appeals' decision of June 29, 1992, affirming the District Court's dismissal, is published at 968 F.2d 612 (7th Cir. 1992). This Court's opinion reversing and remanding the dismissal of the Plaintiff's Complaint is published at 114 S.Ct. 798 (1994).

STATEMENT OF JURISDICTION

The Judgement Order of the Court of Appeals was entered on May 16, 1994. A timely Petition for Rehearing with suggestion for rehearing *en banc* was filed in the Seventh Circuit on May 27, 1994, and was denied by Order dated September 12, 1994. The jurisdiction of this Court is conferred under 28 U.S.C. § 1254 (1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 provides in pertinent part as follows:

As used in this Chapter—

> (1) "Racketeering activity"means (B) any act which is indictable under any of the following provisions of Title 18, United States Code . . . Section 1951 (relating to interference with commerce, robbery, or extortion) . . . "

18 U.S.C. § 1962 provides in pertinent part:

> (c) It shall be unlawful for any person employed or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

The Hobbs Act, 18 U.S.C. § 1951 (b) provides in pertinent part as follows:

> The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, fear, or under color of official right.

STATEMENT OF THE CASE

In June 1986 Respondents filed an action in the U.S. District Court of Delaware against certain anti-abortion protestors and organizations. After voluntary dismissal, the Respondents then refiled their Complaint in the Northern District of Illinois in October 1986 seeking a nationwide injunction against the anti-abortion protesters and organizations together with declaratory relief.

In February 1989 the Respondents filed an Amended Complaint alleging, against this Petitioner, violations of RICO, 18

U.S.C. § 1962, setting forth as the sole RICO predicate act, Hobbs Act extortion under 18 U.S.C. § 1951.

A Second Amended Complaint was filed September 1989 (hereinafter referred to as "Complaint"). A Motion to Dismiss the Complaint was filed by the Defendants, and while the Motion was pending, the trial court ordered the Respondents to file a RICO Case Statement setting forth the factual underpinnings of their RICO allegations. The RICO Case Statement was filed on March 18, 1991.

On May 28, 1991, the District Court granted the Defendants' Motion to Dismiss, determining that Respondents had failed to state a RICO claim by alleging conduct that lacked any economic motive. 465 F. Supp. at 941.

The Court of Appeals unanimously affirmed at 968 F.2d 612 (7th Cir. 1992). This Court granted certiorari only as to the question relating to whether RICO requires an economic motive, and ultimately reversed the Court of Appeals, holding that RICO does not require proof of an economic motive. 114 S.Ct.798 (1994).

In the prior appeal before this Court, Petitioner appeared and argued on brief separately and, after the decision of this Court, on February 15, 1994, this Petitioner filed a Petition for Rehearing which was denied on March 21, 1994. In the prior appeal before this Court, Petitioner argued that RICO as applied to this Petitioner was unconstitutional in its application, by infringing the First Amendment rights of Petitioner. Petitioner further argued that under *United States v. Enmons,* 410 U.S. 396 (1976), the Complaint of Respondents failed to state a claim for extortion, because "extortion" as defined by this Court does not extend to even illegal or violent protest activities if those activities are directed toward otherwise lawful objectives.

This Court limited its decision in the prior appeal to the construction of RICO and did not reach the issue of Hobbs Act

extortion or the alleged First Amendment violation resulting from RICO's application to presumptively protected free speech activities. *National Organization for Women v. Scheidler,* 114 S.Ct. 798 (1994).

After remand to the Court of Appeals, Petitioner and other Co-Defendants moved the Court of Appeals under Circuit Rule 54 of the Local Rules of the Seventh Circuit Court of Appeals to affirm the trial court's dismissal of the Complaint or in the alternative, to set the case down for further briefing and further oral argument on the First Amendment issues and the issues relating to whether the Complaint stated a claim for Hobbs Act extortion.

In response to these Motions, the Court of Appeals declined to decide the issue of Hobbs Act extortion, and further declined to specifically decide the First Amendment issues regarding RICO's application to protest activities, and instead directed the trial court to address those issues on remand.(A-4)

The Respondents have alleged in their Complaint, claim III, that this Petitioner had liability under § 1962 (c) of RICO (18 U.S.C. § 1961 *et seq.*).

The only predicate act under RICO, alleged by Respondents extortion under the Hobbs Act (18 U.S.C. § 1951) (R. 236, ¶98).

The Petitioner's alleged "extortionate" acts, according to Respondents, consist of presumptively protected First Amendment conduct, namely:

1. The fact that she "took part" in and was a speaker at the conference sponsored by PLAN, (R.236, ¶55);

2. That she planned, and took part in, a retrieval of the human remains of aborted babies from a loading dock of the Vital Med Pathology Lab., which provided disposal of the remains (the remains alleged to have been in a storage drum with "other medical waste")(R. 236, ¶67);

3. That she conducted and publicized "funeral masses" and burial ceremonies for those human remains (R.236,¶64-77);

4. That she allegedly "threatened to disclose confidential information about previous patients of this clinics" (although Respondents do not describe what that confidential information was), something that was considered by Appellants as an "obvious" risk to the identity of patients (R.236, ¶75);

5. That she threatened to, and in fact did, release the names of the abortion clinics where the human remains were generated (R.236, ¶ 98j);

6. That she, lastly, alleged pressured a landlord not to rent to an abortion clinic by sending letters "threatening disruption and harassment" (i.e., "pickets and demonstrations . . . sidewalk counselors . . . press coverage . . . ") if the abortion clinic moved in (R.236, ¶125).

Respondents have never specially alleged that this Petitoner has, in any way, been directly involved with, or responsible for, any physical injury or violence in any anti-abortion activity.

This Petitioner, in her Answer to the Complaint, alleged that the funeral masses and burial ceremonies, and the retrieval of the aborted remains, were performed as an act of religious worship and faith (R.314, ¶77).

In Respondent's RICO Case Statement, filed subsequent to the Complaint, they attempted further allegations of "extortion"against this Petitioner consisting solely of vague allegations of "harassment" of persons at abortion clinics ("harassment" is not defined, nor are specific acts described) (R.469), and further allege that she participated in or organized abortion clinic"blockades" (i.e., nonviolent sit-ins in front of abortion clinics) including incidents of "clinic invasion" (not defined, but apparently consisting of entering an abortion clinic to verbally advocate against abortion) (R.469).

In sum, all of these alleged activities are either presumptively protected First Amendment conduct, and for reasons cited below, the Complaint does not state a valid claim against this Petitioner, or such conduct fails, as a matter of law, to constitute "extortion" under the Hobbs Act.

Pursuant To Supreme Court Rule 29, this Petitioner declares that the constitutionality of an Act of Congress is drawn in question by this Petition, and neither the United States nor any department, ofice, agency, officer, or employee thereof is a party. 28 U.S.C.§ 2403 (a) may be applicable.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari in order to clarify that the rule of *United States v. Enmons*, 410 U.S. 396 (1976), excluding from the definition of Hobbs Act "extortion" labor protest aimed at a lawful union objective, should also be applied to protest activities of a non-labor nature. Since the decision in *Enmons* in 1976, this Court has not commented on whether *Enmons* applies in other than a labor context. There is a split among the various federal circuits on this issue.

This Court should also grant certiorari to determine another crucial issue of first impression: whether RICO, through the use of Hobbs Act extortion as a predicate act, when applied to presumptively protected First Amendment activity, violates the First Amendment.

Lastly, this Court should grant certiorari to clarify that the Court of Appeals *must* determine whether the trial court's dismissal of the Complaint should be sustained on grounds other than those decided by this Court in the prior appeal, before it can consider a remand back to the trial court.

These reason for granting certiorari are further expanded hereafter in this Petition.

This Petitioner further incorporates by reference and adopts the Petition for Writ of Certiorari of Petitioners Joseph M. Scheidler, Timothy Murphy, Andrew Scholberg, and The Pro-Life Action League, Inc. in the matter of *Joseph M. Scheidler, Timothy Murphy, Andrew Scholberg, and The Pro-Life Action League, Inc. v. Delaware Women's Health Organization, Inc., Summit Women's Health Organization, Inc.*, arising from the same decision of the Seventh Circuit Court of Appeals in this same case.

I. UNDER THE RULE OF *United States v. Enmons*, THE COMPLAINT FAILS TO SHOW THAT PETITIONER'S PEACEFUL PROTEST ACTIVITIES CONSTITUTES "EXTORTION" THROUGH THE "WRONGFUL" USE OF FEAR UNDER THE HOBBS ACT.

The Hobbs Act defines "extortion" as "the obtaining of property from another, with his consent, induced by *wrongful* use of actual or threatened force, violence, or fear . . ." 18 U.S.C. §1951 (b)[2]. (Emphasis added).

In *United States v. Enmons*, 410 U.S. 396 (1976), this Court construed, "wrongful" under the Hobbs Act as requiring not only that the *means* used by the Defendant to perform the acts in question must be improper, but also the *objectives* and *goals* sought to be advanced by that conduct must likewise be illegal and "wrongful" to constitute "extortion".

In *Enmons*, the defendant union members and officials were charged with a series of acts of deliberate violence, including the firing of high-power rifles and blowing up property owned by the employer, during the course of a labor dispute (*Id.* at 410 U.S. 398).

The Respondents' Complaint, on its face, shows that Petitioner's conduct was motivated by her desire to oppose abortion. The objective of ending abortion is not, in itself, unlawful. *Bray v. Alexandria Women's Clinic*, 506 U.S_____,113 S.Ct. 753 (1993). The rule of *Enmons* should apply so as to warrant the affirming of the dismissal of the Complaint in this case. Because this Court has never decided the question of whether the *Enmons* rule should apply to non-labor protests, this Court should grant certiorari to clarify this issue. Such a ruling would be consistent with this Court's recent refusal to apply Hobbs Act extortion to matters historically considered to be outside the realm of the Hobbs Act, or to conduct rendered unavoidable by reason of

political realities, like the funding of election campaigns through private contributions which was deemed to be outside the scope of the Hobbs Act, in *McCormick v. United States, 500 U.S. 257 (1991).*

Moreover, there is a split of decisions among the federal circuits on whether *Enmons* should be strictly limited to labor contexts.

In the First Circuit, the rule (also referred to as the "claim of right" defense) was deemed at least *prima facie* applicable to a non-labor debtor-lender relationship alleged to be extortionate in *United States v. Sturm,* 870 F.2d 769, 772 (1st Cir. 1989). The court noted that ". . . most federal appellate courts, including this court, have restricted *Enmons* and its claim of right defense to the labor context, fearing that a broader application could effectively repeal the Hobbs Act"., (*Id.*) (citations omitted). The court also apparently aligned *Enmons* with the proposition that, regarding the element of the "wrongful" use of fear under the Hobbs Act, " . . . there is nothing inherently wrongful about the use of economic fear to obtain property . . . "(Id. at 870 F.2d 773).

Considering the fact that Petitioner's actions may be, at worst, examples of the use of "economic fear" to achieve social change, the reasoning of *Sturm* compels a grant of certiorari and a reversal of Court of Appeal's Order remanding this case back to the trial court.

The Tenth Circuit has considered the issue and implied that the reasoning of *Enmons* may apply to non-labor contexts, and that the essence of the rule has more to do with the legitimacy of the claimed right underlying the conduct than whether it arises in a labor dispute or not. In United States v. Warledo, 557 F.2d 721, 729-730 (10th Cir. 1977) the court held that the *Enmons* rule did not apply to a case where the defendants, an Indian-rights group, used threats of force against a railroad in an attempt to extract payment for lands they contended that the railroad had

stolen from their Indian Nation. The court ruled that the "claim of right" defense did not apply because the defendants were demanding payment for *past wrongs*, as opposed to a demand for recognition, or the exercise of, present rights. In addition, the court noted that the legitimacy of the defendants' claim was undercut by the fact that they were not official representatives of the Seminole Indian Nation, the claimed owner of the lands in question.

Nine other federal circuits, however, have either expressly or impliedly limited the rule of *Enmons* exclusively to cases involving labor activities: *United States v. Robilotto*, 828 F.2d 940, 945 (2nd Cir. 1987); *United States v. Agnes*, 753 F.2d 293, 298-299 (3rd Cir. 1985); *United States v. Lambert*, 994 F.2d 1088, 1092 (4th Cir. 1993); *United States v. Williams*, 621 F.2d 123, 125 (5th Cir. 1986) *United States v. Jones*, 766 F.2d 994, 1002-1003 (6th Cir. 1985) *cert. denied*, 474 U.S. 1006 (1985); *United States v. Castor*,937 F.2d 293, 299 (7th Cir. 1991); *United States v. Cohen*,738 F.2d 287, 298 (8th Cir. 1984); *United States v. Thordarson*, 646 F.2d 1323, 1327 (9th Cir. 1981); *United States v. Blanton*, 793 F.2d 1553, 1561-1562 (11th Cir. 1986).

Not only are individuals like Petitioner exposed to RICO liability because of mere association with groups which allegedly engage in "extortionate" protests, but the converse is also true, as noted during oral argument in the prior appeal of this case. Some of this Court's membership expressed concern with the consequences of a broad view of "extortion" under the Hobbs Act, when coupled with RICO liability, in cases brought against activist organizations:

> " . . . why I'm concerned about it is that the combination of that broad interpretation of extortion, plus the interpretation of RICO that the petitioners favor here, leaves one in a situation where any - - national organization which has adherents and hangers-on

> who may commit a tort, hitting someone with a picket sign or trespassing upon property, by committing an unlawful act can be charged with committing extortion even though they're not trying to get money.
>
> And this means that any - - national organization demonstrating for some political cause exposes itself to lawsuits nationwide . . . " Tr of Oral Arg, pg. 23.

For the foregoing reasons, we request that this Court grant this Petition for Writ of Certiorari.

II. RICO, THROUGH ITS INCORPORATION OF HOBBS ACT EXTORTION, AND AS APPLIED TO PETITIONER, VIOLATES THE FIRST AMENDMENT.

In their brief on the prior appeal before this Court, Respondents conceded that:

> The parties and amici agree that *NAACP v. Clairborne Hardware Co.,* 458 U.S. 886 (1982) governs the First Amendment issues here. (Reply Brief of Petioners,16).

Under *NAACP v. Clairborne Hardware Co.* Petitioner's alleged wrongful conduct is presumptively protected under the First Amendment. This Court in *Clairborne Hardware Co.* noted that "Speech does not lose its protected character, however, simply because it may embarrass others or coerce them into action," (*Id.* at 458 U.S. 910). As in *Clairborne Hardware Co.,* this Petitioner's conduct "clearly involved constitutionally protected activity. The established elements of speech, assembly, association, and petition, 'though not identical, are inseparable'" (*Id.*, 458 U.S. 911) (citations omitted).

Petitioner's conduct in speaking at a pro-life conference, persuading a landlord not to do business with an abortion clinic, and her retrieval and burial of human remains all fit within the paradigm of classic First Amendment activity. These "non-violent

elements . . . are entitled to the protection of the First Amendment," (*Id., 458 U.S. 915).*

Further, Respondents' vague, broad, and sweeping Complaint fails to satisfy the requirement of "precision of regulation" which is demanded when the alleged conduct "occurs in the context of constitutionally protected activity . . . " (*Id.*, at 458 U.S. 916); see also *Franchise Realty v. S.F. Loc. Joint Exec. Bd.*, 542 F.2d 1076 (9th Cir. 1976), *cert. denied,* U.S. 940 (1977), and *Oregon Natural Resources Council v. Kerr,* 944 F.2d 531 (9th 1991).

In addition, if Respondents' broad allegations under RICO are sufficient to impose liability against Petitioner, then this Court should affirm the dismissal of the Complaint on the grounds that RICO is unconstitutionally overboard in its application to the presumptively protected First Amendment conduct of Monica Migliorino (Miller).

Petitioner is entitled to claim that the law in question is "invalid as applied to the expressive activity" of this party regardless of whether the law is constitutional on its face. *City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 803 (1984).

Petitioner is being punished with the Draconian bludgeon of RICO for her expressive conduct, which is admittedly aimed at opposing abortion, and putting abortion clinics out of their profitable business. Nevertheless, because none of her speech or her expressive conduct is alleged to be the kind of speech that "is independently prescribable ("i.e.,' fighting words or threats"), or is so infused with violence as to be indistinguishable from a threat of physical harm . . . " under ***Madsen v. Women's Health Center,***___U.S.___129 L Ed 2d 593, 1994, and therefore it must be protected from all but the most narrowly drawn sanctions.

Further, it cannot be said that salvaging human aborted remains from an area to which they had been abandoned as "medical waste" and submitting them to religious burial is *malum in se,* or even unreasonable in light of *Planned Parenthood of Minn. v. State of Minn.*, 910 F.2d 479, 486-489 (8th Cir. 1990) (upholding Minnesota's legislative "conclusion that fetal remains are the equivalent of human remains" and thus requiring "dignified" handling of aborted remains), or in light of the viewpoint that such remains deserve ceremonial burial as a matter of moral or religious duty.

Moreover, Petitioner's alleged liability under RICO by reason of her having given a speech at the convention of PLAN (the alleged RICO "enterprise") runs contrary to the proposition that "guilt by association is philosophically alien to the traditions of a free society and the First Amendment itself." *Clairborne Hardware Co.*, 458 U.S. at 932.

Therefore, because the activity of Petitioner is protected under the First Amendment, and because the Complaint fails to specifically associate this conduct with acts of violence, and, because liability under RICO is posited, in this case, through overbroad allegations that result in RICO being unconstitutionally applied to the expressive activities of Monica Migliorino (Miller), certiorari should be granted, and dismissal of the Complaint should be affirmed.

III. THE COURT OF APPEALS ERRED IN FAILING TO AFFIRM THE DISMISSAL OF THE COMPLAINT ON ALTERNATE GROUNDS, AFTER REMAND FROM THIS COURT

The court of appeals was required to affirm the trial court's dismissal of Respondent's Complaint under *Brown v. Allen,* 344 U.S. 443 (1953) even though the reason given by the trial court was reversed by this Court.

"The prevailing party [ie. Petitioner at the trial level] may, of course, assert in a reviewing court any ground in support of his judgement whether or not that ground was relied upon or even considered by the trial court." *Dandridge v. Williams*, 397 U.S. 471, 475 n.6 (1970).

And where "[t]he issue [has been] fully argued both here and in the District Court, consideration of the . . . claim is appropriate" in this Court (*Id.*).

CONCLUSION

For all the reasons stated above, a Writ of Certiorari should be issued to review the judgement and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 55

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Decided May 16, 1994

No. 91-2468

NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of itself and its women members and other women who use or may use the services of women's health centers that provide abortions, DELAWARE WOMEN'S HEALTH ORGANIZATION, INCORPORATED and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC., on behalf of themselves and all other similarly situated clinics,

Plaintiffs-Appellants,

v.

Joseph M.Scheidler, John P. Rayna, Randall A. Terry, Andrew D. Scholberg, Conrad Wojnar, Timothy Murphy, Monica Migliorino, Vital-Med Laboratories, Incorporated Pro-Life Action LeagueIncorporated, Pro-Life Direct Action, League, Incorporated, Project Life, and Operation Rescue

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
(No. 86 C 7888, James F. Holderman, Judge.)

ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES.

Before: Honorable Walter J. Cummings, Circuit Judge, Honorable William J. Bauer, Circuit Judge, Honorable Bruce M. Van Sickle, District Judge[1]

ORDER

The plaintiff, the National Organization for Women, Incorporated, the Delaware Women's Health Organization, Incorporated and the Summit Women's Health Organization Incorporated, filed this lawsuit against a number of individuals and groups who oppose abortion. The plaintiffs' second amended complaint ("complaint") alleges violations by the defendants of the Sherman Antitrust Act, 15 U.S.C. § and the Racketeer Influenced and corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962 (a), (c), and (d). The complaint also raises several pendent state claims. The district court dismissed the plaintiff's case pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure. *National Org. for Women v. Scheider,* 765 F. Supp. 937, 945 (N.D. Ill.1991). We affirmed. *National Organization for Women v. Scheidler,* 968 F.2d 612, 614 (7th Cir. 1992). The Supreme Court granted in part plaintiffs' petition for writ of certiorari to consider whether RICO section 1962 (c) and (d) require proof that either a racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose. *National Organization for Women v. Scheider,* 113 S. Ct. 2958 (1993). The plaintiffs also petitioned for review of our decision that their complaint failed to allege any violation of the Sherman Act. The court denied plaintiffs' petition for writ of certiorari on the Sherman Act issues. *Id.*

The Supreme Court reversed our decision as the RICO sections 1962(c) and (d). The Supreme Court held that sections

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[1] The Honorable Bruce M. Van Sickle, District Judge of the United States District Court for the District of North Dakota, is sitting by designation.

1962 (c) and (d) do not contain an economic motive requirement. *National Organization for Women v. Scheidler*, 114 S. Ct. 798, 801, 806 (1994). The Court's opinion was limited only to two of the RICO claims. The Court concluded that the plaintiffs "may maintain this action if [defendants] conducted the enterprise through a pattern of racketeering activity. The questions of whether the [defendants] committed the requisite predicate acts, and whether the commission of these acts fell into a pattern, are not before us." *Id.* at 806. The Supreme Court remanded the case to this court for further proceedings in conformity with its opinion.

As we have said, there are two RICO sections at issue in this case — sections 1962 (c) and (d). Section 1962 (c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce to conduct or participate, directly or indirectly, in the conduct of such enterprises's affairs through a pattern of *racketeering activity* or collection of unlawful debt.

18 U.S.C. § 1962 (c) (emphasis added). Section 1962 (d) provides:

> It shall be unlawful for any person to conspire to violate any of the provisions of subsection . . . (c) of this section.

18 U.S.C. § 1962 (d). RICO defines "racketeering activity" to include "any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1951 (relating to interference with commerce, robbery, or extortion)." 18 U.S.C. § 1961 (1) (B).

In this case, the plaintiff's complaint alleges violations of section 1951 — the Hobbs Act — as the "racketeering activity" or predicate acts that give rise to a pattern of racketeering activity by the defendants. Specifically, the plaintiffs allege Hobbs Act

extortion—including attempts to commit extortion and conspiracy to commit extortion—as the defendants' predicate acts for purposes of RICO.

Defendants contend that the plaintiffs' complaint does not allege that their actions violated the Hobbs Act. The Supreme Court expressly declined to reach the issue and expressed no opinion upon it. "Scheidler," 114 S. Ct. at 801 n.2. We direct the district court on remand to address this issue.

As to plaintiffs' complaint, we reaffirm our original dismissal of plaintiffs' complaint as to count 1 (Sherman Act) and count 2 (RICO § 1962(a)). The Supreme Court's decision reinstates count 3 (RICO § 1962 (c)) and count 4 (RICO § 1962 (d)). Counts five, six, and seven, which allege violations of state law, survive as well pursuant to the district court's supplemental jurisdiction. *See* 28 U.S.C. § 1367.

Also on remand, if necessary, the district court should consider which of the defendants' activities, as alleged, are protected by the First Amendment to the United States Constitution. *See Scheidler*, 114 S. Ct. at 806 n.6. As Justice Souter pointed out in his concurring opinion, "even in a case where a RICO violation has been validly established, the First Amendment may limit the relief that can be granted against an organization otherwise engaging in protected expression." *Id.* at 807 (Souter, J., concurring). This includes Hobbs Act extortion—the sole RICO predicate act alleged by plaintiffs in both their complaint and their RICO Case Statement.

We remand this case to the district court for further proceedings.

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Judgement-Without Oral Argument
Date: May 16, 1994

No. 91-2468

NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of itself and its women members and other women who use or may use the services of women's health centers that provide abortions, DELAWARE WOMEN'S HEALTH ORGANIZATION, INCORPORATED and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC., on behalf of themselves and all other similarly situated clinics,

Plaintiffs-Appellants,

v.

JOSEPH M. SCHEIDLER, JOHN P. RYAN, RANDALL A. TERRY, et. al.,

Defendants - Appellees.

Appeal from the United States District Court
Northern District of Illinois, Eastern Division.
(No. 86 C 7888, James F. Holderman, Judge.)

ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES

Before: Honorable Walter J. Cummings, Circuit Judge, Honorable William J. Bauer, Circuit Judge, Honorable Bruce M. Van Sickle, District Judge[1]

This cause came before the Court on remand from the United States Supreme Court.

This cause is REMANDED to the District Court for further proceedings, in accordance with the decision of this Court entered on this date.

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[1] The Honorable Bruce M. Van Sickle, District Judge of the United States District Court for the District of North Dakota, is sitting by designation.

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UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

September 12, 1994

No. 91-2468

NATIONAL ORGANIZATION FOR WOMEN, INC., et al.
Plaintiffs-Appellants,

v.

Joseph M. Scheidler, et al.,

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
(No. 86 C 7888, James F. Holderman, Judge.)

Before: Honorable Walter J. Cummings, Circuit Judge Honorable William J. Bauer, Circuit Judge Honorable Bruce M. Van Sickle, District Judge[1]

ORDER

On consideration of the petition for rehearing filed by defendant-appellee Vital-Med Laboratories, Inc., all of the judges on the original panel have voted to deny. On consideration of the petition for rehearing with suggestion for rehearing en banc filed by defendants-appellees Joseph M. Scheidler, Andrew Scholberg, Timothy Murphy, The Pro-Life Action League, Inc., Randall A. Terry, project Life, Operation Rescue, and Monica Migliorino Miller, all of the judges on the original

[1] The Honorable Bruce M. Van Sickle, District Judge of the United States District Court for the District of North Dakota, is sitting by designation.

panel have voted to deny and no judge in active service requested a vote thereon[2].

Therefore, the petition for rehearing and the petition for rehearing with suggestion for rehearing en banc are DENIED.

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[2] The Honorable Kenneth A. Ripple took no part in consideration or decision of the suggestion for rehearing en banc.

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

September 30, 1994

No. 91-2468

NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of itself and its women members and other women who use or may use the services of women's health centers that provide abortions, DELAWARE WOMEN'S HEALTH ORGANIZATION, INCORPORATED and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC., on behalf of themselves and all other similarly situated clinics,
Plaintiffs-Appellants,

v.

Joseph M. Scheidler, John P. Ryan, Randall A. Terry, et. al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
(No. 86 C 7888, James F. Holderman, Judge.)

Before: Honorable William J. Bauer, Circuit Judge

Upon consideration of:

1. "Motion of Joseph M. Scheidler, Andrew Scholberg, Timothy Murphy, The Pro-Life Action league, Inc., Randall A. Terry, Project Life, Operation Rescue, and Monica Migliorino Miller, to stay mandate of the Court of Appeals pending the filing and disposition of a Petition for Certiorari by the United States Supreme Court" filed September 16, 1994, by counsel.

2. "Plaintiffs Opposition to Defendant's Motion to Stay Mandate" filed September 23, 1994, by counsel.

3. "Appellees' response to Appellants' opposition to Motion for Stay of Mandate" filed September 26, 1994, by counsel.

It is ordered that #1 is DENIED.